



April 25, 2002

Mr. Mike Taylor  
General Manager  
Brushy Creek Municipal Utility District  
901 Great Oaks Drive  
Round Rock, Texas 78681-2506

OR2002-2131

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161853.

The Brushy Creek Municipal Utility District (the "district") received a request for all e-mail messages received by or sent by Board of Directors President Jimmy Griffith since January 29, 2002, including all e-mail messages sent to or from any home or office computer. The requestor indicates that this request includes all e-mail messages sent to or from Mr. Griffith and all district legal, financial, or engineering consultants that relate to any aspect of Mr. Griffith's employment with Naismith Engineering. You state that the district does not have some of the requested information. You also claim that some of the requested information is not public information as defined by section 552.002(a) of the Public Information Act (the "Act"). We have considered your arguments.

You state that the district does not have any e-mail messages relating to Mr. Griffith's employment with Naismith Engineering because Mr. Griffith is not employed by Naismith Engineering. Rather, you indicate that Mr. Griffith serves as an independent contractor to Naismith Engineering. As a result, you claim that the district has no documents that are specifically responsive to this aspect of the request. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). We note, however, that the district has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). Further, we note that if a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that may be responsive so that the requestor may narrow or clarify the request. Open Records Decision No. 663 at 5 (1999).

Next, you claim that e-mail communications sent between Mr. Griffith and Naismith Engineering are not public information as defined by section 552.002(a) of the Act. The Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision Nos. 558 (1990), 499 (1988). Section 552.002 of the Government Code, however, defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. See Open Records Decision No. 462 (1987). You state that the district does not have possession of e-mail communications sent between Mr. Griffith and Naismith Engineering, and that the district does not have a right of access to such information. In previous correspondence to this office dated February 19, 2002, the district indicates that such e-mail communications are "unrelated to the District and instead relate to specific engineering projects on which [Mr. Griffith and Naismith Engineering] are working for other clients." Based on these representations, we conclude that e-mail communications between Mr. Griffith and Naismith Engineering that are unrelated to district business, and to which the district has no right of access, are not subject to disclosure under the Act.

Finally, we note that the present request seeks more than merely e-mail communications related to Mr. Griffith's employment with Naismith Engineering. The request actually seeks all e-mail messages received by or sent by Mr. Griffith since January 29, 2002. You have not submitted any information responsive to the present request. Further, you have not indicated that the district does not have any e-mail messages received by or sent by Mr. Griffith since January 29, 2002, or that you wish to withhold all such information from disclosure. Therefore, to the extent e-mail messages sent to or from Mr. Griffith since January 29, 2002, exist, we assume that you have released such information to the requestor. If you have not released any such e-mail messages, you must release them to the requestor at this time. See Gov't Code §§ 552.301(a), .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 161853

c: Mr. John C. McLemore  
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